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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 773

SAM CERAMI,
Petitioner,

versus

WM. D. HAAS, JR.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

and

SUPPORTING BRIEF

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Filed, March 1, 1943.

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SUPREME COURT OF THE UNITED STATES

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No.

SAM CERAMI,
Petitioner,

versus

WM. D. HAAS, JR.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES.

The petition of SAM CERAMI, respectfully shows:

1. For the reasons hereinafter set out, the final judgment in favor of Wm. D. Haas, Jr., and against petitioner by the Supreme Court of Louisiana in the case of *Wm. D. Haas, Jr., v. Sam Cerami, No. 36,318, ... La., ..., 10 So. 2d. 61,* (Adv. November 19, 1942), is erroneous, and the Federal questions presented and the rulings thereon are such as to bring the case within the jurisdiction of this

Court; and petitioner believes that a writ of certiorari should be granted by this Court, directed to the Supreme Court of Louisiana and commanding it to certify and send up to this Court a complete transcript of the record of the proceedings had in said case in the trial court and in the Supreme Court, in order that the same may be reviewed by this Court and such judgment may be rendered as the law and the facts may warrant. As required by the law of Louisiana, a complete transcript, in triplicate, of the proceedings in the trial court was prepared and certified by the clerk of that court and was filed by petitioner, as appellant, in the Supreme Court, and one copy thereof remains permanently in the archives of said Court.

SUMMARY AND STATEMENT OF THE CASE

2, (a). The respondent herein, as plaintiff, filed his suit against petitioner, as defendant, and alleged in his petition, (R. 1), that, by the instrument, (R. 3), which he filed with and as part of his petition, defendant had *sold* to him a royalty interest in the land described therein, that, by the judgment in *Cerami v. Haas, 195 La. 1048, 197 So. 752*, the Supreme Court of Louisiana had *upheld the sale*, that, by the judgment in *Angichiodo v. Cerami et al., 28 Fed. Supp. 720*, the United States District Court for the Western District of Louisiana had held plaintiff to be a *holder* in good faith as a *purchaser* on faith of the public record, and that he was entitled to a royalty deed *evidencing said sale*. He prayed for judgment ordering defendant to perform *the contract*, and decreeing that, in the event he should fail to do so, the judgment should stand as a muniment of title in plaintiff to the royalty *purchased* by him.

The alleged "sale," which plaintiff filed with and as part of his petition reads:

"November 1, 1938

"Mr. W. D. Haas, Jr.,
Bunkie, La.

"This will confirm our verbal understanding regarding title of the West ½ of NE Quarter, of Sec. 6, T 2 S, R. 3 East, Avoyelles Parish, La. It is understood and agreed that we will execute royalty deed for an additional one-quarter of the royalty interest under the above described land; upon perfection of title defects now being straightened out. The price to be as formerly agree(d) upon, or $30.00 per acre base.

"Very truly yours,

"Sam Cerami."

"State of Louisiana
Parish of Avoyelles

"Before me, the undersigned authority in and for the Parish State, personally came and appeared: W. D. Haas, Jr., who being first duly sworn, did depose and say: That the above and foregoing instrument and agreement was executed by Sam Cerami on the date first above written in the presence of affiant; that the said Sam Cerami executed same of his own free will.

"W. D. Haas, Jr.

"Sworn to and subscribed before me this 10th day of February, 1939.

"C. E. Laborde, Jr.,
Notary Public."

2, (b). Defendant filed an exception of prematurity, and exceptions of no right of action and no cause of action, (R. 4). Later he withdrew the exception of prematurity, so that the case might be tried, (R. 5), and the other exceptions, after submission, were "referred to the merits," that is formal decision on them was deferred until after hearing on the merits.

2, (c). Reserving his rights under the latter exceptions, defendant answered, (R. 7), denying catagorically the allegations of the petition, averring that, for want of mutuality and consideration, the instrument sued on was not a reciprocal contract, and pleading, (R. 10, 13), in the event the court should hold that the instrument was an agreement to sell, that the price stipulated in the instrument was out of all proportion to the value of the royalty interest to be sold, a ground for nullity under statute law of Louisiana.

2, (d). On the hearing of the case, counsel for plaintiff (R. 18), offered in evidence the instrument sued on, P. Ex.-1, (R. 3, 26), as a sale, to which counsel for defendant objected, (R. 19), on the ground that the instrument was not admissible to prove title in plaintiff, because it was not in form and substance an act translative of title and was not a complete reciprocal contract. Counsel for plaintiff offered in evidence the petition and the answer of Haas in *Angichiodo v. Cerami et al.*, P. Ex. 2, (R. 27-47), the opinion (called decree) in that case P. Ex. 3, *28 Fed. Supp. 720*, (R. 47), and the judgment dismissing that suit as to Haas, P. Ex. 4, (R. 53), to all of which counsel for defendant objected as irrelevant and immaterial. Counsel for plaintiff offered in evidence the entire record in *Cerami*

v. Haas, (R. 198-209), with particular reference to the judgment therein, P. Ex. 7, *197 So. 752,* (R. 203). To the offer of this and all the other documents and of any testimony whatever, counsel for defendant objected, for the reason that plaintiff was suing on an alleged completed and executed sale, and the remedy of specific performance is unknown in Louisiana where the contract sued on is alleged to be a sale. All the objections were overruled.

Counsel for defendant, (R. 21), offered in evidence the testimony of Moresi, Carnahan and Lambremont, taken before a notary public, (R. 69), together with numerous documents bearing upon the production of oil from defendant's land, D. Ex-2 to D. Ex-22, identified with and returned as part of said testimony, for the purpose of proving the actual value and the market value of the royalty interest which was the subject of the alleged contract, in support of the allegations of paragraph 17, (R. 10), of his answer, as amended, (R. 13). The objection of counsel for plaintiff that the evidence had no bearing on the issues of the case was sustained. Whereupon, counsel for defendant reserved an exception to the ruling and made the entire offering part of it. Counsel for defendant also sought to prove by plaintiff himself the value of royalties in this land on February 10, 1939, but objection by counsel for plaintiff was sustained.

2, (e). After hearing the case on the merits the court formally overruled defendant's exceptions of no right of action and no cause of action, and proceeded to decide the case on the merits, (R. 56). Holding that the validity of the instrument sued on *as a sale* was settled by the judgment in *Ceramie v. Haas,* and rejecting all evidence offered by defendant to prove that the price was out of all proportion to

the value of the royalty interest, the court held that the instrument was *a sale* as of *February 10, 1939*, the date on which it was said in *Cerami v. Haas* that Haas impliedly accepted the contract, and rendered judgment ordering defendant to execute a deed conveying the royalty interest to plaintiff as of *February 10, 1939*, and decreeing that, in the event of his failure to do so, the judgment stand as a muniment of title in plaintiff, (R. 60). A rule for a new trial, (R. 61), was overruled.

2, (f). Defendant appealed to the Supreme Court. Holding, (R. 181), that the validity of the instrument sued on, *as an agreement to sell*, was settled by the judgment in *Cerami v. Haas* and, in contradiction of reasons upon which that judgment was based, that the affidavit by Haas on *February 10, 1939*, appended to the instrument was also "evidence of the agreement between the parties," and rejecting all evidence offered by defendant to prove that the price was out of all proportion to the value of the royalty interest, that Court held that the instrument was *a contract, an agreement to sell*, as of *November 1, 1938*, the date on which it was signed by defendant only and on which it was held in *Cerami v. Haas* that it "showed on its face the reciprocal consent of the parties," and affirmed the judgment of the district court, on July 20, 1942.

2, (g). Defendant petitioned for a rehearing, (R. 186). The Court, by an opinion *per curiam*, (R. 194), held that the instrument sued on was *a contract, an agreement to sell*, as of *February 10, 1939*, the date on which it was said in *Cerami v. Haas* that Haas impliedly accepted the contract and which was also the date of the affidavit by Haas appended to the instrument and said in the original

opinion in this case to be "evidence of the agreement between the parties," and still rejected all evidence offered by defendant to prove that the price was out of all proportion to the value of the royalty interest, and refused a rehearing, on October 7, 1942, and the judgment became final. This petition is filed on March 1, 1943.

2, (h). Petitioner then petitioned the Chief Justice of the Supreme Court of Louisiana for a stay of execution of the judgment for ninety days within which he would apply to this Court for relief, (R. 195), which stay was opposed by respondent, (R. 196), and was denied, on the ground that petitioner, the defendant in the case, had not taken a suspensive appeal from the trial court to the Supreme Court, (R. 196). Whereupon, petitioner gave the Chief Justice and the Supreme Court and respondent formal notice of his intention to apply to this Court for a writ of certiorari to the Supreme Court of Louisiana. He did not then apply to this Court for a stay of execution, because he was satisfactorily informed by the producer and purchaser of the oil from his land that the proceeds of said oil credited to the royalty interest here involved would continue to be held in suspense until final disposition of this controversy, and they have been informed of the delays granted by Mr. Justice Black, in which petitioner might file his petition in this Court for certiorari, and they have renewed their assurance that the funds would be held in suspense.

JURISDICTION

3, (a). The Court has jurisdiction in this case, under Section 237 of the Judicial Code, 28 U. S. C. A. 344, paragraph (b), to review by certiorari the action of the

Supreme Court of Louisiana, the highest court of the State in which a decision could be had, in that, in conformity with the legal procedure in such cases in Louisiana, petitioner timely set up and claimed certain titles and rights under that clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States which provides, "Nor shall any State deprive any person of life, liberty, or property, without due process of law," and said claim was denied, as is hereinafter set out in detail with respect to each Federal question presented.

3, (b). Although neither the trial court nor the Supreme Court ruled directly upon the Federal questions so presented, the decision was not and could not have been made without considering those questions, and the necessary effect of the judgment is a denial of the titles and rights so claimed by petitioner. The decision is not in accord with the applicable decisions of this Court.

3, (c). The United States Supreme Court has jurisdiction to review by certiorari a judgment of a state court of last resort, alleged by a petitioner to deny a right, title or immunity claimed by him under the Constitution of the United States.

U. S. C. title 28, 344 (b);

Indiana ex rel. Anderson v. Brand, 303 U. S. 95, 98, 82 L. Ed. 685, 689;

International Steel & Iron Co. v. National Surety Co., 297 U. S. 657, 666, 80 L. Ed. 961, 967;

Virginia v. Imperial Coal Sales Co., 293 U. S.

15, 16, 17, 79 L. Ed. 171, 173;

Live Oak Water Users Ass'n. v. Railroad Commission of California, 269 U. S. 354, 357, 70 L. Ed. 305, 308;

Grayson v. Harris, 267 U. S. 352, 357, 69 L. Ed. 652, 655;

Baker v. Dreusedow, 263 U. S. 137, 141, 68 L. Ed. 212, 215;

Rogers v. Hennepin County, 240 U. S. 184, 188, 60 L. Ed. 594, 597;

Henderson v. Henderson Bridge Co., 173 U. S. 592, 43 L. Ed. 823.

"Whether the Federal question was adequately presented and decided is itself a Federal question."

Lowell v. Griffin, 303 U. S. 444, 450, 82 L. Ed. 949, 952.

3, (d). Where it affirmatively appears upon the face of the record that a Federal question constituting an appropriate ground for review was presented and was expressly or necessarily decided by a state court of last resort, in order to render its judgment, the Supreme Court has jurisdiction to review the judgment.

Missouri ex rel. Missouri Insurance Co. v. Gehner, 281 U. S. 312, 319, 320, 74 L. Ed. 870, 875;

Mellon v. O'Niel, 275 U. S. 212, 214, 72 L. Ed. 245, 246;

Whitney v. California, 274 U. S. 357, 360, 71 L. Ed. 1095, 1099, and numerous decisions there cited;

Steines v. Franklin County, 14 Wall. 15, 21, 20 L. Ed. 846, 848.

3, (e). Where the ruling claimed to infringe Federal rights is first made by the state court of last resort, a Federal question raised with respect thereto on application for rehearing is timely, since it is raised at the first opportunity.

International Steel & Iron Co. v. National Surety Co., 297 U. S. 657, 666, 80 L. Ed. 961, 966;

Great Northern R. Co. v. Sunburst Oil & Ref. Co., 287 U. S. 358, 367, 77 L. Ed. 360, 368;

Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U. S. 673, 677, 678, 74 L. Ed. 1107, 1112;

Missouri ex rel. Missouri Insurance Co. v. Gehner, 281 U. S. 312, 320, 74 L. Ed. 870, 875;

Saunders v. Shaw, 244 U. S. 317, 320, 61 L. Ed. 1163, 1165.

QUESTIONS PRESENTED

The nature of the case is fully disclosed in the foregoing Summary and Statement of the Case. Bearing upon the several questions presented and coming within the jurisdiction of the Court, the record shows:

FIRST QUESTION

4, (a). The first question presented is, whether or not the ruling of the Supreme Court of Louisiana herein, by giving effect to the judgment in *Cerami v. Haas, 195 La. 1048, 197 So. 752,* (R. 203), as *res judicata* and "the law of the case" on the validity of the instrument sued on, (R. 3, 26), *as an agreement to sell,* and founding its judgment against petitioner upon that ruling deprive petitioner of his vested rights and of his property, without due process of law, in contravention of that clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States which provides, "nor shall any State deprive any person of life, liberty, or property, without due process of law."

4, (b). The question was fairly presented in petitioner's application for a rehearing in the Supreme Court, (R. 186), paragraphs 3 and 13:

> "3. The Court erred in holding that the district court and this Court had jurisdiction to consider and try in the case of Cerami v. Haas the question of title and to render judgment thereon, not responsive to the pleading and not on any issue presented for decision, and in holding that the validity of the instrument involved was *res judicata* by said judgment, or that said judgment, 'as far as it went, settled finally the law of the case,' that is, 'settled finally' the question of validity of the instrument."

> "13. The judgment herein, by giving effect, as *res judicata* and "the law of the case," to the judgment in the case of Cerami v. Haas, which was not responsive to the pleadings or within the issues

of that case and which the Court had no jurisdiction to render, deprives appellant of his vested rights and his property without due process of law, in contravention of that clause of Article IV, Sec. 15 of the Constitution of Louisiana, providing that vested rights shall not be divested unless for the purposes of public utility, and of Article I, Sec. 2, of the Constitution of Louisiana, providing that no person shall be deprived of life, liberty or property, except by due process of law, and of that clause of the Fourteenth Amendment to the Constitution of the United States, providing that no State shall deprive any person of life, liberty, or property, without due process of law."

4, (c). The Supreme Court denied a rehearing on October 7, 1942, on an opinion *per curiam*, (R. 194), without referring to the State and Federal constitutional questions presented.

4, (d). The Federal question was timely raised, because the ruling was first made by the Supreme Court, in its opinion, (R. 181), and the application for rehearing presented the first opportunity for petitioner to raise the question. Under the established jurisprudence of Louisiana *res judicata* must be specially pleaded, as it was in this case. The plaintiff, respondent here, pleaded and persisted throughout that the instrument was a *sale* and that its validity *as a sale* had been *upheld*, was *res judicata*, by the judgment in *Cerami v. Haas*, and the trial court *so held*. Since that judgment, whether valid or not, on its face unmistakably did not hold that the instrument was a *sale* and could not serve as proof of its judicial confirmation as a *sale*, defendant, petitioner here, was not required to plead its nullity. The Supreme Court, however, held that the in-

strument was an *agreement to sell*, subject to the suspensive condition expressed therein, and that its validity as an *agreement to sell* was *res judicata* by the judgment in *Cerami v. Haas*, and that, even if, strictly speaking, that were not true, that judgment did settle finally the law of the case.

Thus the Supreme Court invoked and maintained against defendant a ruling not only not pleaded by plaintiff but actually contradictory of plaintiff's pleading and contentions, since under the statute law of Louisiana, a *sale* and an *agreement to sell* are entirely different in their nature and in their effects. Then, for the first time did it become necessary for petitioner to question the validity of the judgment in *Cerami v. Haas*, and to plead that giving effect to it, as *res judicata* and "the law of the case," deprived him of his property, without due process of law. In view of the settled jurisprudence above mentioned and of the pleading and persistent course of respondent, petitioner was not required to anticipate the ruling of the Supreme Court.

SECOND QUESTION

5, (a). The second question presented is, whether or not the ruling of the Supreme Court that the instrument upon which plaintiff is proceeding is a complete reciprocal agreement to sell and the judgment of said Court affirming the judgment of the trial court and decreeing that petitioner is bound by said instrument and shall convey to plaintiff the one-quarter royalty interest described therein, or that said judgment shall stand as a muniment of title in plaintiff, deprive petitioner of his vested rights and of

his property, without due process of law, in contravention of that clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States which provides, "nor shall any State deprive any person of life, liberty, or property, without due process of law."

5, (b). The question was presented in the original answer of petitioner, as defendant, in the court of first instance, (R. 7), in which the allegations of plaintiff's petition were denied, and in paragraphs 5, 9, 18, 11 and 19 of which defendant pleaded: 5, that there was no contract whatever between him and plaintiff respecting said royalty interest; 9, that the instrument was not a reciprocal contract and was *nudum pactum*, because it was never assented to by plaintiff and was executed by defendant without consideration; 18, that in support of the allegations of paragraph 9, he relied upon the law of Louisiana governing contracts and particularly, (a) specified articles of the Civil Code, bearing upon mutuality as an essential to the formation of a contract, and (b) specified articles of the Civil Code, bearing upon consideration as an essential to the formation of a contract; 11, that the instrument was not a grant to plaintiff of (a) the right or option to accept the contract in the future or (b) the right or option to purchase the royalty interest, because defendant executed the instrument without consideration, no time was stipulated in the instrument within which plaintiff might accept the contract or purchase the royalty interest, and plaintiff did not consent to or accept the contract; and 19, that in support of the allegations of paragraph 11, he relied upon specified articles of the Civil Code, bearing upon the right or the option to accept a contract or to purchase in the future. And in paragraph 20, he alleged:

"All the laws of the State of Louisiana governing contracts and particularly the laws enumerated in Paragraphs 18 and 19 above, are clear and free from ambiguity and the letter of said laws can not be disregarded. Only by disregarding both the letter and the spirit of those laws and substituting therefor its own fiat, could the Court render a judgment herein decreeing that defendant is bound by the instrument upon which plaintiff proceeds to convey said one-quarter royalty interest to plaintiff or that such judgment shall stand as a muniment of title in plaintiff. By so doing, the Court would . . . deprive defendant of his vested rights and of his property, without due process of law, in direct contravention of . . . that clause of the Fourteenth Amendment to the constitution of the United States, providing that no State shall deprive any person of life, liberty, or property, without due process of law."

5, (c). The trial court rendered judgment as prayed for by plaintiff, (R. 60), except that it went further than the prayer and fixed February 10, 1939, as the date as of which defendant should execute the deed and as of which the judgment would stand as a muniment of title in plaintiff, if defendant failed to execute the deed. In its opinion, (R. 56), the court did not refer to the questions presented in the above quoted paragraphs of defendant's answer. Whereupon, defendant filed a rule for a new trial, (R. 61), and in paragraph 2, "making allegations which could not appropriately be made before the judgment complained of was rendered," (a) alleged that the Court erred in holding that the instrument was a complete reciprocal contract, and, in so doing, disregarded specified articles of the Civil Code, bearing upon contracts affecting real estate, and (c) re-stated paragraph 20 of the answer as applicable.

5, (d). The Supreme Court having affirmed the judgment of the district court, (R. 181-185), defendant filed his petition for rehearing, (R. 186), in which he averred that the judgment was erroneous and in paragraphs 4, 5, 6, 7, 8 and 9 set out specifically errors bearing upon the question of validity of the instrument involved, as a complete reciprocal contract. And in paragraph 14 he averred:

> "The judgment herein, by giving effect, as a complete and enforcible agreement to sell, to the letter of November 1, 1938, signed by appellant only, is in contravention of the statute law of the State of Louisiana governing contracts, and particularly, the following articles of the Civil Code: Arts. 1765, 1766, 1768, 1780, 1797, 1798, 1800, 2439, 2440, 2275 and 2462, bearing upon mutuality as an essential to the validity of the contract; Arts. 1768, 1893, 1896 and 2462, bearing upon consideration as an essential to the validity of the contract; and Arts. 1893, 1896, 2462, 1801, 1802 and 1809, bearing upon the right or the option to consent to or accept the contract at a later date, all of which are clear and free from ambiguity. By disregarding both the letter and the spirit of those laws and substituting therefor its own fiat, the Court has disregarded also the plain mandate of Article 13 of the Civil Code of Louisiana, and has indulged in judicial legislation, in contravention of Article VII, Sec. 1, Article II, Secs. 1 and 2, and Article III, Sec. 1, of the Constitution of Louisiana; and said judgment deprives appellant of his property without due process of law, in contravention of that clause of Article IV, Section 15, of the Constitution of Louisiana, providing that vested rights shall not be divested unless for purposes of public utility, and of Article I, Sec. 2, of the Constitution of Louisiana, providing that no

person shall be deprived of life, liberty, or property, except by due process of law, and that clause of the Fourteenth Amendment to the Constitution of the United States, providing that no State shall deprive any person of life, liberty, or property, without due process of law."

5, (e). The Supreme Court denied a rehearing on October 7, 1942, on an opinion *per curiam*, (R. 194), in which it was held that the date of the *contract to sell* was February 10, 1939, instead of November 1, 1938. The Court did not refer to the State and Federal constitutional questions presented.

THIRD QUESTION

6, (a). The third question presented is, whether or not the ruling of the Supreme Court that it was not legal and proper, in order to determine whether or not the price of $600 was out of all proportion to the value of the royalty interest on to take the value of the royalty interest the date of the sale, that is, on the date that the right accrued to each party to demand and enforce specific performance of the contract, and the judgment of said Court, affirming the judgment of the trial court and decreeing that petitioner is bound by the instrument upon which plaintiff proceeds and shall convey to plaintiff the one-quarter royalty interest described therein, or that said judgment shall stand as a muniment of title in plaintiff, deprive petitioner of his vested rights and of his property, without due process of law, in contravention of that clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States which provides, "nor shall any State deprive any person of life, liberty, or property, without due process of law."

6, (b). In paragraph 17 of his answer, (R. 7), as amended, (R. 14), defendant, so pleading only in the event the court should hold the instrument upon which plaintiff was proceeding to be a complete reciprocal contract to sell, averred that the price was out of all proportion to the value of the one-quarter royalty interest which was the subject of the contract, that the price which plaintiff sought to pay was $600.00, "while the value of said royalty interest was at all times greatly in excess of $600.00 and was at the time this suit was filed and is now not less than $1,250 per royalty acre and a total of not less than $25,643."

6, (c). During the trial of the case, (R. 21), defendant offered in evidence the testimony of Moresi, Carnahan and Lambremont, taken before a notary public, together with exhibits, D-2 to D-22, inclusive, identified with and returned as part of said testimony, (R. 69-177), all of which, on objection of plaintiff's counsel, was ruled inadmissible, as irrelevant and immaterial. Whereupon, counsel for defendant excepted to the court's ruling and made the testimony and exhibits part of his exception, so that the appellate court could determine whether or not they were admissible and, if so, give them the same consideration as if they had been admitted and considered by the trial court.

From the testimony of Mr. Moresi, as an expert, (R. 73-75, 82-86), it appears that the value of the oil taken from defendant's land and credited to the one-quarter royalty interest involved here was, through October 31, 1940, $3,747.52, that the actual value of the oil recoverable after that date and to be credited to this one-quarter royalty interest was $90,516.52, that recovery of oil would decrease

the value of the reserve and increase the credit to this interest, so that the total of the credit and reserve would remain unchanged. From the testimony of Mr. Carnahan, (R. 75-78), and of Mr. Lambremont, (R. 78-82), it appears that on March 13, 1941, the date they testified, the twenty and one-half royalty acres comprising this one-quarter royalty interest had an actual market value of from $1,200 to $1,400 per acre, or from $24,600 to $28,700. This does not include the $3,747.52 above mentioned. The price stipulated in the letter of November 1, 1938, is $30.00 per royalty acre, and plaintiff seeks to pay $600.00.

6, (d). The district court having rendered the judgment, (R. 60), and having held in its reasons for judgment, page 60, that "the value of the royalty at the time of the transaction was speculative, (and) the present value of the royalty is not material to the issue," defendant filed his rule for a new trial, (R. 61), and in paragraph 2, "making allegations which could not appropriately be made before the judgment complained of was rendered," (b) alleged that the Court erred in holding that the disproportion between the price and the value of the royalty interest had no bearing on the merits of the case and in founding the judgment partly on lack of evidence on that subject, and in ignoring the provisions of Article 2464 of the Civil Code, and (c) re-stated paragraph 20 of the answer as applicable.

6, (e). The Supreme Court, affirming the judgment of the district court, held in its opinion, (R. 181-185), that, "in determining the question of adequacy of the price of a *contract of sale*, (under Article 2464 of the Civil Code of Louisiana), the value of the thing sold or to be sold must be taken as of the date of the contract, and not at some

subsequent date," but in the same paragraph held that the value at the date of the *contract to sell* was controlling in this case. And, observing that "the value of a royalty interest or mineral interest in unproven land is essentially speculative," the Court held, as applicable in this case, that, for that reason, there was no right of action under Article 2464 of the Civil Code "to annul a sale or an agreement for the sale of mineral rights in non-producing land, on the ground that the price stipulated is out of all proportion to the value of the mineral rights sold or to be sold." And the Court did not consider at all the actual value and the market value of the royalty at the time the suit was filed or at the time defendant waived the suspensive condition of the contract.

6, (f). In his petition for a rehearing, (R. 186), defendant averred, paragraphs 10 and 11, that the Court erred in holding that it was necessary to prove the value of the royalty interest on either November 1, 1938, the date on which the instrument was signed by defendant only and more than three months before the so-called acceptance by plaintiff, or February 10, 1939, the date of the so-called acceptance by plaintiff, because said ruling was contrary to the provisions of Article 2464 of the Civil Code and to the provisions of the Civil Code with respect to lesion and particularly Articles 1870 and 1871, and to the jurisprudence of the State and particularly *Ronaldson & Puckett v. Bynum, 122 La. 687, 48 So. 152.* And in paragraph 12, he averred that the Court erred in not considering the evidence of the actual value and the market value of the royalty interest involved, on January 22, 1941, the date on which defendant waived his exception of prematurity and the suspensive condition of the contract, and on which the right

accrued to each party to demand and to enforce specific performance by the other, and in not decreeing the proposed sale null and void because the price of $600 was out of all proportion to the value of the royalty interest. And in paragraph 15, page 192, he averred:

> "The judgment herein, by holding that it was not legal and proper, in order to determine whether or not the price of $600 was out of all proportion to the value of the royalty interest, to prove the value of the royalty interest on the date of the sale, that is, on the date that the right accrued to each party to demand and enforce specific performance of the contract, is in contravention of the law of Louisiana governing sales and particularly Articles 2464, 1870 and 1871 of the Civil Code. By disregarding both the letter and the spirit of those laws and substituting therefor its own fiat, the Court has disregarded also the plain mandate of Article 13 of the Civil Code, and has indulged in judicial legislation, in contravention of Article VII, Sec. 1, Article II, Secs. 1 and 2, and Article III, Sec. 1, of the Constitution of Louisiana; and said judgment deprives appellant of his property, without due process of law, in contravention of that clause of Article IV, Sec. 15, of the Constitution of Louisiana, providing that vested rights shall not be divested unless for purposes of public utility, and of Articles I, Sec. 2, of the Constitution of Louisiana, providing that no person shall be deprived of life, liberty or property, except by due process of law, and of that clause of the Fourteenth Amendment to the Constitution of the United States, providing that no State shall deprive any person of life, liberty, or property, without due process of law."

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6, (g). A rehearing was denied on October 7, 1942, on an opinion *per curiam*, (R. 194), in which it was held

that the date of the contract to sell was February 10, 1939, instead of November 1, 1938, and reaffirmed and held applicable to this case the ruling that there is no right of action under Article 2464 of the Civil Code to annul an agreement to sell royalty or mineral rights in non-producing land, on the ground that the price is out of all proportion to the value of the royalty or mineral rights sold or to be sold. The Court did not refer to the State and Federal constitutional questions presented.

REASONS RELIED ON FOR ISSUANCE OF WRIT

7. Petitioner relies on the following reasons for the issuance of a writ of certiorari herein. The judgment of the Supreme Court (R. 181), is arbitrary and oppressive, in that, in violation of those provisions of the Constitutions of the United States and the State of Louisiana guaranteeing persons against being deprived of property without due process of law, it takes from petitioner royalty interests shown to be worth about $90,000 and gives them to Wm. D. Haas, Jr., for $600. Said judgment was and could have been rendered only: by giving effect as *res judicata* to the judgment in *Cerami v. Haas, 195 La. 1048, 197 So. 752* (R. 203), as holding that the instrument sued on herein (R. 3, 26), was a complete reciprocal contract to sell; by disregarding entirely the clear and unambiguous statute law of Louisiana governing contracts, comprising applicable articles of the Civil Code; by arbitrarily, and without any support in law or fact, holding that the instrument was a complete reciprocal contract to sell; by ignoring completely the suspensive condition expressed in the instrument itself, and ordering petitioner specifically to perform the instrument as an agreement to sell, as of February 10, 1939, more than three years before the happening of the

condition and nearly two years before petitioner waived the condition; by refusing to consider and apply the uncontradicted evidence of the actual value and the market value of the royalty interest involved, to determine whether or not the price was out of all proportion to the value of the royalty interest as of the date of the sale, that is, the date on which petitioner waived the suspensive condition and, if in fact the instrument was a reciprocal agreement to sell, each party acquired the right to demand and enforce specific performance.

THE QUESTIONS ARE SUBSTANTIAL

8. The questions involved in this case are substantial, with respect to both petitioner's interest and the general or public interest. The value of the royalty interest involved was shown in the testimony to be about $90,000, about $16,000 of which are now in funds held in suspense to the credit of this royalty interest by the producer of oil from petitioner's land, pending termination of this litigation, and the amount in suspense increases at about $500 per month. For that value and cash, if the judgment of the Supreme Court of Louisiana should stand, petitioner will receive $600, somewhat less than one percent. of the value and money in and. The case is important also, because petitioner comes to this Court for protection and preservation of his constitutional rights, which are in grave jeopardy, because of the decision of the highest court of his home State, a decision that counsel believe is so lacking in support that they unhesitatingly advised application to this Court. It is of paramount public or general concern that the constitutional safe-guards be not relaxed, especially in difficult times of unrest.

WHEREFORE, petitioner respectfully prays that a writ of certiorari issue herein, directed to the Honorable the Supreme Court of the State of Louisiana and commanding that Court to certify and send up to this Court for review and determination a transcript of the record of the proceedings in the case of *Wm. D. Haas, Jr., v. Sam Cerami, No. 36,318*, on the docket of said Court, that the judgment of said Court therein be reversed, and that the Court grant to petitioner such other and further relief as to the Court may seem proper.

Respectfully submitted,

SAM CERAMI, Petitioner.
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